Remarks

The present response is to the Office Action mailed in the above referenced case on March 22, 2006, made Final. The rejections are repeated from an earlier action, also made Final, and the finality is based on the assumption of the correctness of the Examiner's reasoning in the action, which is flawed and in contention. The applicants are filing a request for continued prosecution, and paying the fees, but respectfully request the finality be withdrawn and the fee paid be credited to deposit account 50-0534.

The problem in this case is (again) exemplified in the Examiner's "Response to Arguments" section beginning on page 11 of the present action. The Examiner states that applicants argue that Weinberg does not teach testing for applied structural changes, but that Weinberg "...clearly teaches interacting with websites located on the server and running data checks on said website to determine structural changes to the website (column 10: e.g. "Text check", "image Check"). *But text and image changes, as long as there is still text or an image, as the case may be, at that point in the page structure, are not structural changes - these are merely changes in data content.*

In addition to the arguments presented in the last response in the present case, and to more succinctly present the argument the Examiner doesn't yet accept, the applicant wishes to point out that structural changes are succinctly defined in applicant's as-filed disclosure beginning on page 65 at line 24, as follows: "For example, a structure change within a website may include rearrangement of tables, hyperlinks, and so on. There may be additional hyperlinks added, existing hyperlinks removed, as well as address changes and other structural alterations. All of the structural updates are accessible from the source information of a website. The new correct information is used in the construction of a new logic block."

This structural limitation in applicant's claims is essential in understanding and judging the merit of the argument. This is true because in the applicant's situation the web sites are third party web sites, such as bank sites, from which the applicant's employer, through a subscription service, regularly extracts data for subscribers. The

bank, and the persons who maintain the bank's website, may (and will) periodically change the *structure* of the site, and they have no knowledge of the applicant's employer's activities, and no obligation to inform the applicant or his employer of any change. *This is why the tests are performed, to determine when the* <u>structure</u> *of the site has changed.*

In the case of Weinberg the tests are created and performed by persons who are employees or consultants to the enterprise who hosts the site. It's all an inside job. The purpose is to determine if the site is performing its dedicated functions properly, such as issuing tickets, getting the price correct and so on. There is no expectation that the structure of the site might change, and if it were to change, it would likely be changed by the people structuring and performing the test, or they would be informed. There is no disclosure concerning and no discussion of structural change to the sites in test in Weinberg. The nature of the Weinberg teaching is to test the functionality of a site in the sense of the site performing its expected functions.

As further indication of this critical difference in Weinberg and the instant claims, there is no teaching in Weinberg, once a sequence of steps in a test is instantiated by recording the sequential actions of a developer in using a site for a particular function, of changing those steps as a result of a failure in the test.

So, taken as a whole and in context, Weinberg teaches a system for testing servers to determine functionality of the server itself, and *changes in content* in data on pages of a transactional server. The following paragraph is taken from Weinberg column 2, lines 23-40".

"In a preferred embodiment, the testing tool generates tests by recording interactions between a user and the transactional server as the user performs a transaction, such as a business process. For example, in a web-based implementation, the testing tool records interactions between a web browser and a web server, including link selections and form submissions made by the user and pages returned by the server. During or following the recording session, the user can define verification steps to test for expected server responses. For example, the user can define verification steps to test for expected text messages, images, or numerical values within a web page or other screen returned by

the transactional server. During execution of the test, which may occur in either an attended or unattended mode, the testing tool "plays back" the recorded user steps while monitoring and recording the responses of the transactional server. The results of the test, including the results of the verification steps, are stored for viewing."

There is no teaching here of what would happen if the *structure* of the site were unexpectedly changed. Please note that in Weinberg, according to the above paragraph, the testing tool "plays back" the recorded user steps while *monitoring and recording the responses* of the transactional server. It is the responses of the server that are monitored and recorded, and just that in Weinberg. If there is a structural change, *there is no response*, and that is what the applicant's claimed system records; that is a failure of the script. In Weinberg not returning the expected price is a failure, even though a price is returned. That is a "pass" in applicant's claimed invention. Not returning anything at all is a failure.

Note that in Weinberg a test is created by recording actions performed by a user in navigating through a server's structure and downloading information, such as text and images, from pages on the server. Tests are run by the system automatically repeating the steps recorded, monitoring and recording the responses of the transactional server, and after finishing the sequence, recording the results of the test. From the above paragraph: "The user can define verification steps to test for expected server responses. For example, the user can define verification steps to test for expected text messages, images, or numerical values within a web page or other screen returned by the transactional server." Why exactly would the user need to define verification steps to test for expected server responses? Simply because the tests are designed and structured to test the return of data, be it text or images. Is the data returned the data I expected? For example, I calculated what the price should be. Did the server return the price I calculated, or a different price?

Clearly, if a *structural* alteration is made between the time the test is recorded and the test is run, such as a link is changed to send the navigation sequence to a different destination than the one recorded, the test itself would fail; it would not complete.

In Weinberg's system, the purpose is to determine if *expected results* are returned. In applicants' system the navigation and extraction routine is running to retrieve information from the website, and there is no expectation of what the information is. For example, a client's bank balance now as opposed to the balance at a previous time. Applicants' error system, which looks for *functional* differences, is concerned with *whether the information can be retrieved at all*, not whether it is the same as expected, as in Weinberg.

In applicants' system the purpose is to find and record any breakdown in the *ability* to retrieve information. This is because in applicants' system the script is visiting third party sites on behalf of a client and retrieving typically financial information. The third parties, such as banks and savings institutions, have no responsibility to report structural changes in their sites to the applicants' system, therefore site changes and updates may well result in *interruption* of applicants' script, so the information for the client cannot be retrieved; so the script itself has to be updated.

So a basic error in the rejections is the assertion the Examiner insists on maintaining that a change in text or an image is a structural change. It isn't. In Weinberg there is a necessity and a requirement that the recorded navigational routine performs to completion. Applicants are checking for any change in the routine that causes information retrieval to fail. It is an entirely different thing.

So an important issue in the present rejection of claim 1, for example, is on page 3 of the action, concerning the element:

"a change-notification module for indicating a point in process where a navigation and interaction routine has failed and for creating a data file containing parameters associated with the failed routine;"

The Examiner relies on Weinberg, column 2, lines 39 and 40, on column 6, lines 19-22: and on column 17, lines 10-52. The applicants find considerable teaching as to a tree structure for displaying test results, but no *specific or enabling teaching* in any of this for indicating a point-in-process where a navigation and interaction routine has failed, that is, did not work at all.

The lack of correspondence of the teaching of Weinberg to the change notification module in claim 1 applies to all of the other rejections of the standing claims, as well, so the applicants still firmly believe the claims are patentable over the art of Weinberg, and combinations with Weinberg, and that these claims should be allowed.

The applicants have cancelled claims 29-86 in light of the restriction requirement imposed.

The applicant wishes to emphasize once again that the Examiner is treating "failed" as used in the Weinberg reference to equate to "failed" as used in the applicant's claims. In Weinberg "failure" is returning data that is not expected (but data none-the-less). In applicant's claim 1 the language "...for indicating a point in process where a navigation and interaction routine has failed..." means the routine cannot continue. It is entirely different. Weinberg does not teach applicant's claim limitations in respect to structural changes, and the claims are patentable over Weinberg. In the "response to arguments" section the Examiner states that in Weinberg the checks verify that certain data in a web page has remained the same or has changed, and if changed, produces an error notification for a user. Applicant urges the Examiner to understand that if the data has *changed,* this could not be known in Weinberg unless *data is returned,* because to see if it changed, the returned data must be compared to the *expected* data, which is set up for the comparison in the verification step created by the user. In applicant's claim, an error is recorded because *no data is returned, and there is no verification step that has to be created or used.*

The Examiner goes on to state that he disagrees with the applicant that text or images do not constitute part of the structure of a web page. Here the Examiner is challenging an argument the applicant does not make. Of course text and images are a part of the structure. But if text or images are *still there* and accessible by the script *the structure did not change,* even if the text is different or the image is different.

Lastly the Examiner describes what would happen if in Weinberg an image had been removed, that is, the structure had indeed changed (so it is clear the Examiner really does know the difference). But what he describes *is not taken from Weinberg,* but is a

supposition on the part of the Examiner.

If there are any time extensions needed beyond any extension specifically requested with this amendment, such extension of time is hereby requested. If there are any fees due beyond any fees paid with this amendment, authorization is given to deduct such fees from deposit account 50-0534.

Respectfully Submitted,
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